



Michael H. Bernstein

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August 21, 2013

Robert A. Santucci
Santucci & Associates
Post Office Box 416
Westhampton, New York 11977

Re: *Pollner v. United Healthcare Insurance Company*,
Civ. Act. No. 13-cv-1881(DRH)(GRB)
SDMA File No. 03246-000193

Dear Robert:

As you know, this office represents defendant United Healthcare Insurance Company ("United") d/b/a Oxford Health Plans in the above-referenced matter. Please be advised that your responses to United's First Request for Admissions and First Request for the Production of Documents ("discovery demands") were due to be served on August 12, 2013. You are currently in default in providing these responses.

The discovery demands require that you admit that Dr. Pollner is not in possession of the assignment of benefit forms referenced in paragraph 8 of his Complaint. If this is denied, Dr. Pollner must produce all of the applicable assignment of benefits forms. We assume that your failure to comply with the discovery demands in a timely fashion is due to the fact that these assignments do not exist. Therefore, Dr. Pollner is neither a plan "participant" nor a "beneficiary" (*See* ERISA §3(7)-(8), 29 U.S.C. §1002(7), (8)), and he does not have statutory standing under ERISA to prosecute an action against United. *See American Med. Assoc. v. United Healthcare Corp.*, No. 00-cv-2800(LMM), 2001 WL 863561, *12-*13 (S.D.N.Y. July 31, 2001). Thus far, Dr. Pollner has failed to produce any evidence demonstrating that he is in possession of the relevant assignment of benefits forms. Indeed, in Dr. Pollner's Rule 26(a) Initial Disclosure, which you executed, you did not reference his patients' assignments of benefits as "documents in plaintiff's possession which may be used to support plaintiff's claims." Nevertheless, in paragraph 8 of Dr. Pollner's Complaint, you allege that Dr. Pollner's patients "assigned their medical insurance benefits" to him. Without the executed assignment of benefits forms from each of those patients, it appears this allegation is frivolous. If Dr. Pollner is not in possession of the requested assignments of benefits forms, we request pursuant to Rule 11(b), Fed. R. Civ. P., that you seek leave of the Court to amend your Answer to withdraw this improper allegation within 21 days, or voluntarily dismiss this action due to Dr. Pollner's lack of ERISA standing.

While we do not believe Dr. Pollner has standing to pursue this action, in an effort to resolve this matter we are providing the attached spreadsheet of the claims at issue in this litigation. As discussed at the July 31, 2013 Settlement Conference and further evidenced by the attached spreadsheet, Dr. Pollner was paid \$42,935.37 on the claims at issue in this matter. Please note that there are references to repricing by Omicare on 7 of the paid claims. As you may be aware, Omicare repricing was common prior to the implementation of the Administrative Policy for Non-Par Anesthesiologists in May of 2012. However, upon the implementation of the policy, all non-par claims including Dr. Pollner's were properly denied as the Patients have expressly consented to financial responsibility for the charges. It appears that the 7 claims at

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issue, totaling \$19,600, were paid in error after the implementation of the program. These constitute overpayments subject to recoupment.

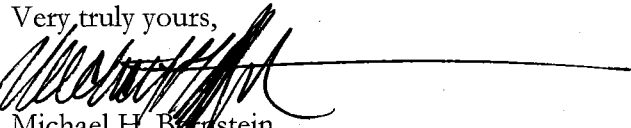
As we have stated from the beginning of this dispute, Dr. Pollner's remedy lies with the Patients to whom services were rendered. They expressly consented to financial responsibility for the services, yet despite his lack of standing Dr. Pollner continues to pursue his claims directly against United. In an effort to resolve this matter, United is willing to forego any claims it has to the \$19,600 in overpaid claims as set forth above, if Dr. Pollner agrees to immediately dismiss his lawsuit with prejudice and execute a Release as to the claims in dispute.

Please have Dr. Pollner review this spreadsheet and indicate whether he agrees with the amounts paid. For any claims where he believes payment has not been made as indicated, we will provide check information confirming that payments were actually made to him. For those claims where no money was paid to Dr. Pollner, please provide the good faith factual basis upon which Dr. Pollner is relying to suggest that the applicable plans provide for Out-of-Network benefits that he is entitled to receive. To the extent that Dr. Pollner is unable to provide such a good faith basis, we will assume that you are not seeking additional information on those claims, including production the applicable individual plan documents for those claims as directed by Magistrate Brown.

, I am hopeful that we can resolve this matter quickly as set forth above. However, if we cannot reach agreement by August 30, 2013, we will be forced to file a motion to dismiss for lack of standing in which we will seek costs and attorneys fees pursuant to ERISA §502(g)(1). Furthermore, in the event that Dr. Pollner refuses to amend his Complaint to remove the above-referenced frivolous allegation (i.e. that his patients "assigned their medical insurance benefits" to him) within 21 days, we will similarly be forced to file a motion for sanctions pursuant to Rule 11(b), Fed. R. Civ. P. Finally, we will be required to file a counterclaim to seek reimbursement of the \$19,600 in overpaid claims as identified above, and we will request that Magistrate Brown issue a written order concerning this discovery ruling, so that we can formally object to the district judge regarding his directive requiring the production of plan documents.

At your earliest convenience, please contact me so that we can schedule a conference call for the week of August 26, 2013 to discuss these issues further.

Very truly yours,



Michael H. Brustein
Sedgwick LLP

Encls.

<u>Grp Name</u>	<u>Product</u>	<u>Claim</u>	<u>DOS</u>	<u>CPT</u>	<u>Billed</u>	<u>UCR</u>	<u>Deductible</u>	<u>Coinsurance</u>	<u>Ox. Pymt</u>	<u>Ck #</u>	<u>Ck Date</u>	<u>Adj Code Description</u>
LEVER ASSOCIATES	HMO	2191721288	5/15/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21124174	7/13/12	NP Anes Clm Den, Mbr resp
PIZZERA LLC	HMO	2184615637.01	5/19/12	00402	\$3,300.00	\$0.00	\$0.00	\$0.00	\$0.00	I22407208	2/4/13	NP Anes Clm Den, Mbr resp
LOWER CROSS AIRCRAFT CORP	MNRP	2222614968	5/30/12	00810	\$3,500.00	\$246.78	\$246.78	\$0.00	\$0.00	Y9521016	8/22/12	NP anes claim OON, mbr resp
ST. JOHN'S UNIVERSITY	Sfunded	2207208728	6/1/12	00740	\$3,500.00	\$2,499.70	\$300.00	\$439.94	\$1,759.76	Z1150823	8/13/12	NP anes claim OON, mbr resp
K2 INTELLIGENCE	MNRP	2222614991	6/4/12	00810	\$3,500.00	\$133.39	\$133.39	\$0.00	\$0.00	Y9528283	8/24/12	Pd per MNRP
MADISON WHOS WHO	HMO	2207208727.01	6/5/12	00740	\$3,500.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	Y9890805	12/24/12	OmniClaim Negotiated Pymt - overpay
THE JEWELRY APPRAISER, INC	MNRP	2222614974.01	6/8/12	00740	\$3,500.00	\$206.75	\$206.75	\$0.00	\$0.00	Y10024007	2/5/13	NP anes claim OON, mbr resp
KATHERINE TESS, INC	MNRP	2222614973	6/12/12	00810	\$3,500.00	\$253.55	\$253.44	\$0.00	\$0.00	I21383011	8/22/12	NP anes claim OON, mbr resp
BERKERY, NOYES & CO LLC	MNRP	2222614963	6/12/12	00740	\$3,500.00	\$233.44	\$233.44	\$0.00	\$0.00	Y9521016	8/22/12	NP anes claim OON, mbr resp
GARY S HITZIG MD PC	MNRP	2222614970	6/14/12	00810	\$3,500.00	\$183.41	\$183.41	\$0.00	\$0.00	Y9528283	8/24/12	NP anes claim OON, mbr resp
SID HALL INC	HMO	2222614976.01	6/19/12	00810	\$3,500.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	I22227868	1/7/13	OmniClaim Negotiated Pymt - overpay
NEW YORK UNIVERSITY	Sfunded	2222614962.01	6/20/12	00810	\$3,500.00	\$3,500.00	\$0.00	\$0.00	\$3,500.00	In A/P		Paid billed charge - overpay
RUBIES COSTUME COMPANY	HMO	2222614990.01	6/21/12	00810	\$3,500.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	I22163260	12/26/12	OmniClaim Negotiated Pymt - overpay
CONCERNED DENTAL CARE	HMO	2222614960.01	6/25/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y10052761	2/12/13	NP Anes Clm Den, Mbr resp
CONCEPTS OF INDEPENDENCE, INC.	MNRP	2244206992	7/13/12	00810	\$3,500.00	\$250.11	\$250.11	\$0.00	\$0.00	I21539076	9/17/12	NP anes claim OON, mbr resp
CONCEPTS OF INDEPENDENCE, INC.	MNRP	2244206993	7/13/12	00810	\$3,500.00	\$240.10	\$240.10	\$0.00	\$0.00	I21539076	9/17/12	NP anes claim OON, mbr resp

PRO-TECH PLUMBING & HEATING	MNRP	2244206998	7/16/12	00810	\$3,500.00	\$246.78	\$246.78	\$0.00	\$0.00	Y9596979	9/17/12	NP anes claim OON, mbr resp
THE WEEKS LERMAN GROUP, LLC	70th	2244206994	7/23/12	00740	\$3,500.00	\$1,677.90	\$1,677.90	\$0.00	\$0.00	I21507479	9/11/12	NP anes claim OON, mbr resp
POSITIVE BEGINNINGS, INC	HMO	2244206989.01	7/24/12	00740	\$3,500.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	I22193440	1/2/13	OmniClaim Negotiated Pymt - overpay
SEGAN, NEMEROV & SINGER	MNRP	2244206988	7/25/12	00810	\$3,500.00	\$223.43	\$223.43	\$0.00	\$0.00	Y9596979	9/17/12	NP anes claim OON, mbr resp
125 EAST 31ST REALTY, LLC	MNRP	2244206991.01	7/27/12	00810	\$3,500.00	\$246.78	\$246.78	\$2.00	\$0.00	Y10017630	2/4/13	NP anes claim OON, mbr resp
LONG ISLAND PLASTIC SURGICAL	HMO	2271217430	8/7/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21647531	10/3/12	NP Anes Clm Den, Mbr resp
WARREN ELEVATOR SERVICE CO	HMO	2271217428	8/7/12	00710	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9650715	10/3/12	NP Anes Clm Den, Mbr resp
MAGGY LONDON INTERNATIONAL LTD	HMO	2271217427	8/8/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21647531	10/3/12	NP Anes Clm Den, Mbr resp
JP MORGAN CHASE	HMO	2290718992	8/14/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9751195	11/5/12	Not enrolled on dos
UNITED SECURITY & FIRE ALARM	HMO	2290718991	8/14/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9716469	10/24/12	COB Pymt Denied, Exceeds Norm Ben
CROWN HEIGHTS BUNCH-O-BAGELS	HMO	2290718994	8/15/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9716469	10/24/12	NP Anes Clm Den, Mbr resp
RUSSO ENTERPRISES INC	HMO	2290718989	8/15/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21782165	10/24/12	NP Anes Clm Den, Mbr resp

CENTRAL LAUNDRY SERVICE CORP	HMO	2290718983	8/16/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21782165	10/24/12	NP Anes Clm Den, Mbr resp
SLANTCO MANUFACTURING	HMO	2290718981	8/17/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9716469	10/24/12	NP Anes Clm Den, Mbr resp
BALTER SALES CO, INC	HMO	2290718986	8/22/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9716469	10/24/12	NP Anes Clm Den, Mbr resp
QUANTUM FLEXX	HMO	2290718993	8/24/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9716469	10/24/12	NP Anes Clm Den, Mbr resp
FEDERATION EMPLOYMENT AND GUID	MNRP	2290718987	8/29/12	00810	\$3,500.00	\$223.43	\$223.43	\$0.00	\$0.00	I21832553	11/1/12	NP anes claim OON, mbr resp
EMIGRANT BANK	70th	2290718985	8/30/12	00810	\$3,500.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	I21796141	10/26/12	NP anes claim OON, mbr resp
DELL LITTLE TROVATO VECERE	HMO	2290718982	8/31/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21782165	10/24/12	NP Anes Clm Den, Mbr resp
MAGGY LONDON INTERNATIONAL LTD	HMO	2290718976	9/5/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21782165	10/24/12	NP Anes Clm Den, Mbr resp
RFR HOLDING LLC	70th	2306630503	9/6/12	00810	\$3,500.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	I21901791	11/13/12	NP anes claim OON, mbr resp
TIFFEN ACQUISTION LLC	70th	2306630501	9/10/12	00810	\$3,500.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	I21901791	11/13/12	NP anes claim OON, mbr resp
WANK & LIPTZIN, CPA	MNRP	2306630502	9/11/12	00810	\$3,500.00	\$223.43	\$223.43	\$0.00	\$0.00	I21938963	11/19/12	NP anes claim OON, mbr resp
VALENTIN & KALISH JEWELRY MFG	MNRP	2306630499	9/13/12	00740	\$3,500.00	\$210.10	\$210.10	\$0.00	\$0.00	I21938963	11/19/12	NP anes claim OON, mbr resp
PSYCHOTHEAPE UTIC EVALUATIONAL	HMO	2306630498	9/13/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21884881	11/9/12	NP Anes Clm Den, Mbr resp
TECHNO INC	HMO	2306630496	9/13/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9765966	11/9/12	NP Anes Clm Den, Mbr resp

AMERICAN CHRISTMAS, INC	MNRP	2306630500	9/14/12	00810	\$3,500.00	\$233.44	\$233.44	\$0.00	\$0.00	I21938963	11/19/12	NP anes claim OON, mbr resp
THOMAS M. CARUSONA	HMO	2306630497	9/16/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9765966	11/9/12	NP Anes Clm Den, Mbr resp
MILRO ASSOCIATES INC	MNRP	2306630492	9/20/12	00810	\$3,500.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	Y9828197	12/3/12	OmniClaim Negotiated Pymt - overpay
JEFFREY KRASNOFF, VET	MNRP	2306630490	9/21/12	00810	\$3,500.00	\$220.09	\$220.09	\$0.00	\$0.00	I21938963	11/19/12	NP anes claim OON, mbr resp
MARC S POLLNER MD	HMO	2306630494	9/21/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21884881	11/9/12	NP Anes Clm Den, Mbr resp
EMPOWER CES LLC	HMO	2306630488	9/21/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21884881	11/9/12	NP Anes Clm Den, Mbr resp
POLY-PAK INDUSTRIES, INC	HMO	2306630486	9/24/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9765966	11/9/12	NP Anes Clm Den, Mbr resp
FULL THROTTLE FILMS, INC	MNRP	2306630495	9/27/12	00740	\$3,500.00	\$253.44	\$253.44	\$0.00	\$0.00	I21938963	11/19/12	NP anes claim OON, mbr resp
OLYMPIAN FUEL OIL CORP	HMO	2306630491	9/28/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21884881	11/9/12	NP Anes Clm Den, Mbr resp
GREAT NECK SYNAGOGUE	HMO	2306630487	9/28/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21884881	11/9/12	NP Anes Clm Den, Mbr resp
TRACKMEN GOLF CLUB STABLE, LLC	HMO	2306630489	9/28/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21884881	11/9/12	NP Anes Clm Den, Mbr resp
JEREMY GLICK	HMO	2306630481	10/4/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I21884881	11/9/12	NP Anes Clm Den, Mbr resp
HSBC NORTH AMERICA HOLDINGS LL	Sfunded	2306630482	10/8/12	00810	\$3,500.00	\$1,750.00	\$0.00	\$0.00	\$1,750.00	C2238999	11/16/12	Pd @ 100% of UCR
AMERICAN GLOBAL FASTENERS	HMO	2339419421	10/11/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22072670	12/11/12	NP Anes Clm Den, Mbr resp
NY STATE NURSES ASSOCIATES	70th	2339419422.01	10/15/12	00810	\$3,500.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	Y10038356	2/8/13	OmniClaim Negotiated Pymt - overpay
Healthy NY HMO Individual	HMO	2339419420	10/16/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9856575	12/11/12	NP Anes Clm Den, Mbr resp

STEVEN BERMAN, RPT	HMO	2339419419	10/17/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22072670	12/11/12	NP Anes Clm Den, Mbr resp
ANTHONY V. GUARDINO	MNRP	2339419423	10/24/12	00810	\$3,500.00	\$226.77	\$226.77	\$0.00	\$0.00	Y9899958	12/26/12	NP anes claim OON, mbr resp
DAVID EBRANI DIAMONDS	HMO	2339419415	10/24/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22072670	12/11/12	NP Anes Clm Den, Mbr resp
LANETT HOLDINGS LLC	HMO	2339419417	10/24/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9856575	12/11/12	NP Anes Clm Den, Mbr resp
VALENTIN & KALISH JEWELRY MFG	MNRP	2339419416	10/25/12	00740	\$3,500.00	\$233.44	\$233.44	\$0.00	\$0.00	I22163260	12/26/12	NP anes claim OON, mbr resp
NEUROLOGICAL SPECIALTIES OF LI	HMO	2339419418	10/26/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9856575	12/11/12	NP Anes Clm Den, Mbr resp
NINETY SECOND STREET	90th	2339419621	11/13/12	00810	\$3,500.00	\$2,856.80	\$500.00	\$707.04	\$1,649.76	I22144751	12/24/12	NP anes claim OON, mbr resp
ALLJEN MANAGEMENT CORP	HMO	2347602186	11/15/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22129074	12/20/12	NP Anes Clm Den, Mbr resp
ALLJEN MANAGEMENT CORP	HMO	2354419879	11/20/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22176583	12/28/12	NP Anes Clm Den, Mbr resp
NY PERSONAL HMO	HMO	2354419883	11/21/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y9905812	12/28/12	NP Anes Clm Den, Mbr resp
URBAN FOUNDATION ENG LLC	HMO	2354419878	11/29/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22176583	12/28/12	NP Anes Clm Den, Mbr resp
BUFFA, BOWMAN & ROTHSTEIN LLP	HMO	3018111014	11/30/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22360812	1/28/13	NP Anes Clm Den, Mbr resp
FRIENDSHIP RESTAURANT GROUP	HMO	3018111016	12/3/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22360812	1/28/13	NP Anes Clm Den, Mbr resp
KALATY RUG CORP	MNRP	3031118600	12/4/12	00810	\$3,500.00	\$2,800.00	\$0.00	\$0.00	\$2,800.00	Y10132452	3/8/13	OmniClaim Negotiated Pymt - overpay

BROOKLYN PLUMBING & HEATING	HMO	3031118586	12/10/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22453668	2/11/13	NP Anes Clm Den, Mbr resp
STERLING NATIONAL BANK	HMO	3031118582	12/10/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22453668	2/11/13	NP Anes Clm Den, Mbr resp
NASSIMI CORP	MNRP	3031118583	12/11/12	00810	\$3,500.00	\$243.45	\$243.45	\$0.00	\$0.00	Y10089721	2/22/13	Pd per MNRP
BACIS PET PALACE, INC.	HMO	3031118587	12/12/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	Y10046464	2/11/13	NP Anes Clm Den, Mbr resp
LYNBROOK HEALTH & FITNESS	HMO	3031118580	12/14/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22453668	2/11/13	NP Anes Clm Den, Mbr resp
B&J QUICK FOODS INC	HMO	3031118584	12/17/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22453668	2/11/13	NP Anes Clm Den, Mbr resp
CITI	Sfunded	3044112111	12/19/12	00810	\$3,500.00	\$2,039.10	\$1,500.00	\$161.73	\$377.37	Z1136040	3/4/13	Paid in accordance with benefits.
SCARGUARD LABS, LLC	HMO	3031118588	12/19/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22453668	2/11/13	NP Anes Clm Den, Mbr resp
LISA E GRAUBART	HMO	3044112109	12/21/12	00740	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22528195	2/21/13	NP Anes Clm Den, Mbr resp
CITI	Sfunded	3044112110	12/24/12	00740	\$3,500.00	\$1,926.40	\$1,500.00	\$127.92	\$298.48	Z1136207	3/4/13	Paid in accordance with benefits.
STARCOM COMMUNICATION S SERVICE	HMO	3044112108	12/28/12	00810	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	I22528195	2/21/13	NP Anes Clm Den, Mbr resp